

2497  
No. 11737

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MILO W. BEKINS and REED J. BEKINS, as  
Trustees under the Last Will and Testament  
of Martin Bekins, deceased,  
Appellants,  
vs.

COMPTON-DELEVAN IRRIGATION  
DISTRICT,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Northern Division

FILED  
NOV 4 - 1947

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Chico, Calif.

Attorney for Appellee.

MANDATE OF CIRCUIT COURT  
OF APPEALS

United States of America—ss.

The President of the United States of America to  
the Honorable the Judges of the District Court  
of the United States for the Northern District  
of California, Northern Division—Greeting:

Whereas, lately in the District Court of the United States for the Northern District of California, Northern Division, before you, or some of you, in the Matter of Compton-Delevan Irrigation District, Bankrupt, No. 9870, an order was duly entered on the 19th day of September, 1944, which said order is of record and fully set out in said matter in the office of the clerk of the said District Court, to which record reference is hereby made, and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by Milo W. Bekins and Reed J. Bekins as Trustees under the Last Will and Testament of Martin Bekins, deceased, as appellant, against Compton-Delevan Irrigation District, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the 14th day of May in the year of our Lord One Thousand Nine Hundred

and forty-five the said cause came on to be heard before the said Circuit Court of [1\*] Appeals, on the said Transcript of the Record and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the order of the said District Court in this cause be, and hereby is reversed, with costs in favor of the appellants and against the appellee, and that this cause be, and hereby is remanded to the said District Court with directions to grant appellants' motion to modify the terms of the final decree.

It is further ordered, adjudged and decreed by this Court, that the appellants recover against the appellee for their costs herein expended, and have execution therefor.

(July 17, 1945.)

You, Therefore, Are Hereby Commanded, That such further proceedings be had in the said cause in accordance with the opinion and decreed of this Court and as according to right and justice and the laws of the United States ought to be had, the said notwithstanding.

Witness, the Honorable Harlan Fiske Stone, Chief Justice of the United States, the 11th day of December in the year of our Lord One Thousand Nine Hundred and forty-five.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court  
of Appeals for the Ninth Circuit

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\* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Amount of Costs Allowed and Taxed in favor of the appellants and against the appellee as per Annexed Bill of Items, Taxed in Detail: \$161.60.

PAUL P. O'BRIEN,  
Clerk.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

[Seal] C. W. CALBREATH,  
Clerk, District Court of the U. S.  
Northern District of California.

By /s/ F. M. LAMPERT,  
Deputy Clerk.

[Endorsed]: Filed Dec. 12, 1945. C. W. Calbreath, Clerk.

[Endorsed]: Filed C. C. A. Sept. 29, 1947. [1a]

In the District Court of the United States for  
the Northern District of California, Northern  
Division

No. 9870

(In Bankruptcy)

In the Matter of

COMPTON - DELEVAN IRRIGATION DIS-  
TRICT (In Proceedings for Confirmation of  
Plan of Composition of Outstanding Indebted-  
ness)

ORDER GRANTING MOTION TO MODIFY  
FINAL DECREE

In this matter the Mandate of the United States Circuit Court of Appeals for the Ninth Circuit having come down directing this court to grant the motion of Milo W. Bekins and Reed J. Bekins, as trustees appointed by the will of Martin Bekins, Deceased, for an order requiring the Compton-Delevan Irrigation District to pay said trustees \$2200.00 upon surrender and deposit of \$11,000 principal amount of bonds of said district, with appurtenant coupons, and to modify the terms of the final decree entered herein to extend the time for depositing said bonds and to relieve the said parties from their default, if any herein,

Now, Therefore, upon application of said movements It Is Ordered, Adjudged and Decreed that the final decree entered herein August 17, 1942 be and the same is hereby modified to extend the time

for deposit and surrender of said bonds as herein provided and that the said trustees may, within thirty (30) days [1b] after this order becomes final present to the Treasurer of Compton-Delevan Irrigation District, the petitioner herein, bonds numbers 409, 410, 411, 413, 414 and 415 of the original issue of bonds of said district, and bonds numbers R 115, R 136, R 137, R 138, and R 139 of the Refunding issue of said District, each of the par value of \$1000, together with appurtenant unpaid coupons maturing January 2, 1932 and subsequent, and upon such presentation and the surrender of said bonds and coupons, the said Compton-Delevan Irrigation District shall pay to the said trustees the sum of \$2200.00 upon said bonds and coupons with deductions for missing coupons, if any be missing, as provided in the said final decree and in the interlocutory decree heretofore entered herein, and shall also pay to said trustees the sum of \$161.60 costs taxed herein, or upon the failure of said Compton-Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein.

Dated: January 25th, 1946.

/s/ MARTIN I. WELSH,

Judge U. S. District Court.

[Endorsed]: Filed Jan. 25, 1946.

[Title of District Court and Cause.]

DISAPPROVAL AS TO FORM OF ORDER  
GRANTING MOTION TO MODIFY FINAL  
DECREE

Comes now Compton-Delevan Irrigation District and disapproves the form of the proposed order granting motion to modify final decree, and suggesting that the same be modified by striking therefrom the words "upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein," said words appearing on Lines 16 and 17 on Page 2 of said proposed order.

Dated: January 23, 1946.

PETERS AND PETERS,  
Attorneys for Compton-Delevan  
Irrigation District.

[Endorsed]: Filed Jan. 24, 1946.



[Title of District Court and Cause.]

### NOTICE OF LODGMENT

To Compton-Delevan Irrigation District and Jerome D. Peters and George R. Freeman, Attorneys:

You and each of you will please take notice that on or about January 19, 1946 there was lodged with the Clerk of the Above Entitled Court at the Court-house in Sacramento, California, a proposed order granting motion to modify final decree (copy of which is annexed), in duplicate and that you are required under Rule 5 (d) to approve or disapprove the same as to form as provided in said Rule.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins,  
as trustees appointed by the will of Martin  
Bekins, Deceased.

(Copy of proposed Order attached.)

Approved as to form as provided in Rule 5 (d)  
January 21st, 1946.

GEORGE R. FREEMAN,

Attorney for Petitioner.

[Endorsed]: Filed Jan. 26, 1946.



[Title of District Court and Cause.]

NOTICE OF ENTRY OF ORDER

To Compton-Delevan Irrigation District and Jerome D. Peters, Attorney at Law, Chico, California, and George R. Freeman, Attorney at Law, Willows, California:

You and each of you, will please take notice that on January 25, 1946, the court entered an order herein granting the Motion to Modify the Final Decree, said order ending at line 18, page 2, with the words "decree herein."

Dated: February 4, 1946.

W. COBURN COOK,  
Attorney for Milo W. Bekins and Reed J. Bekins,  
as trustees appointed by the will of Martin  
Bekins, Deceased.

January 21st, 1946.

[Endorsed]: Feb. 6, 1946.

[Title of District Court and Cause.]

APPLICATION FOR LEAVE TO SUE  
IN THIS MATTER

The mandate of the United States Circuit Court of Appeals for the Ninth Circuit having come down directing this court to grant the motion of Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, Deceased, for an order requiring the Compton-Delevan Irrigation District to pay said trustees \$2200 upon surrender and deposit of \$11,000 principal amount of bonds of said district with appurtenant coupons and to modify the terms of the final decree in certain particulars, and the court did, on January 25, 1946 enter an order herein granting the said motion to modify the said final decree;

The said Order granting the motion to modify the final decree amongst other things provided that the said trustees might, within thirty days after the said order should become final, present to the Treasurer of Compton-Delevan Irrigation District bonds numbers 409, 410, 411, 413, 414 and 415 of the [8] original issue of bonds of said district, and bonds numbers R 115, R 136, R 137, R 138 and R 139 of the refunding issues of said district, at a par value of \$1000, together with appurtenant unpaid coupons maturing January 2, 1932 and subsequent, and that upon such presentation and surrender of the bonds and coupons the said Compton-Delevan Irrigation District was required to pay to

the said trustees the sum of \$2200 upon said bonds and coupons, and also was required to pay to said trustees \$161.60 costs taxed herein, or upon the failure of said Compton-Delevan Irrigation District to make such payment upon such presentation and surrender of said bonds and coupons, the said trustees should no longer be bound by the terms of the final decree or the interlocutory decree herein.

The said Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, Deceased, on February 4, 1946 served a notice of the entry of said order upon the said Compton-Delevan Irrigation District and its attorneys, and the said order granting motion to modify the final decree thereupon became final on or about March 6, 1946;

As will more particularly appear from the annexed affidavit, the said Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, Deceased, on or about the 25 day of March 1946 caused the said bonds and coupons to be presented to the Treasurer of Compton-Delevan Irrigation District for payment, surrender and cancellation as provided in said order, and that upon such presentation payment thereof was refused;

That the said bonds and coupons were thereupon deposited with the Anglo California National Bank, Chico Branch, Chico, California, located at and near the office of the Treasurer of said Compton-Delevan Irrigation District, and the said Treasurer

was notified that the said bonds and coupons were on [9] deposit with said Anglo California National Bank, Chico Branch, Chico, California, to be delivered and surrendered to him upon such payment, and the said bonds and coupons remained on deposit in such manner until on or about the 21st day of May 1946, at all times available for the said Treasurer, but that during all of said time the said Treasurer failed and refused to accept delivery and surrender of said bonds and coupons, and failed and refused to pay said \$2200 and the sum of \$161.60 costs as provided in the said order of this court.

Wherefore Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, Deceased, request that an order be made permitting applicants to bring such suits and take such other proceedings in the state courts of the state of California, or in such other courts as may be appropriate, upon said bonds and coupons, and for the collection of said costs, as may seem advisable to applicants free of any restrain of this court, and for the purpose of asserting applicants' rights in and to said bonds and enforcing the payment thereof in full, and establishing and asserting any and all rights which applicants may have under the laws of the state of California.

Dated: June 13, 1946.

/s/ W. COBURN COOK,  
Attorney for Applicants.

State of California,  
County of San Mateo—ss.

Affidavit

Reed J. Bekins, being first duly sworn, says:

That he has read the within Application for Leave to Sue in this Matter, knows the contents thereof, and that the same is true of his own knowledge, that he caused said bonds and coupons described therein to be presented to the Treasurer of Compton-Delevan Irrigation District on or about March 25th 1946 for the purpose of delivery and surrender thereof and cancellation by the said Treasurer, upon the payment to him of \$2200 together with costs in the amount of \$161.60 as provided in the order of this court, referred to in the annexed application, and that he caused said bonds and coupons to remain on deposit with the Anglo California National Bank, Chico Branch, Chico, California, and caused advice to be given to the said Treasurer that the same were available at any time for payment as provided in said order and the said bonds and coupons remained on deposit until after May 21, 1946; that the said Treasurer failed and refused to take and accept delivery and surrender of said bonds and coupons and failed and refused to make payment of the sum of \$2200 and \$161.60 costs, or any other sum, and that on or about May 21, 1946 he caused said bonds and coupons to be withdrawn from said Anglo California National Bank; that said Reed J. Bekins is



one of said trustees of the will of Martin Bekins, Deceased and Milo W. Bekins is the other trustee, and that this affidavit is made on behalf of said trust.

REED J. BEKINS.

Subscribed and sworn before me this 21st day of June 1946.

[Seal]      RICHARD VAN DER BEETS,  
Notary Public in and for said  
County and State of California.

[Endorsed]: Filed Oct. 7, 1946. [11]

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[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR ORDER  
GRANTING LEAVE TO SUE

To Compton-Delevan Irrigation District, and to Jerome D. Peters, Esq., Attorney for Compton-Delevan Irrigation District:

You and each of you will please take notice that on Monday, the 21st day of October, 1946, at the hour of ten o'clock a.m. of that day, or as soon thereafter as counsel can be heard Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, Deceased, will apply to the Court for an order granting leave to sue in this matter.

A copy of said application and of the proposed Order Granting Leave to Sue in this Matter are

annexed. The evidence upon which applicants will rely consists of the pleadings and records in this cause and the annexed application.

The authorities upon which applicants rely consist of Section 403, of Title 11, U. S. C. A.

Dated: October 4, 1946.

W. COBURN COOK,

Attorney for Milo W. Bekins and Reed J. Bekins,  
as trustees under the Last Will of Martin Bekins,  
Deceased.

[Endorsed]: Filed Oct. 7, 1946. [12]

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[Title of District Court and Cause.]

AFFIDAVIT OF JEROME D. PETERS

State of California,  
County of Butte—ss.

Jerome D. Peters, being first duly sworn, deposes and says:

That he is a member of the law firm of Peters and Peters who are the attorneys of record for the Compton-Delevan Irrigation District in the above matter and who are also the attorneys for said District in that certain action pending in this Court entitled Milo W. Bekins and Reed J. Bekins, as trustees under the Last Will and Testament of Martin Bekins, deceased, Appellants, vs. Compton-Delevan Irrigation District, Appellee, being number 10934. [13]

In the course of this Affidavit, reference will be made to the "Transcript of Record" in said action number 10934, which transcript is on file in this Court in the above matter.

The action originated in connection with the final decree of Compton-Delevan Irrigation District entered and filed in this matter by this Court on August 17, 1942; the Bekins, as trustees, were the owners of certain bonds of the District, each of the face value of \$1,000.00, being numbers 409 to 415 (inc.) of Original issue bonds, and numbers R 115, R 136, R 137, R 138 and R 139 of the refunding issue, each of the face value of \$1,000.00. (Tr. 38). Under the final decree referred to, the Court ordered that the sum of \$13,640.00 which had been paid into the registry of the Court by the disbursing agent, being the balance remaining in the latter's hands of the money deposited with it to pay the composition figure on bonds surrendered, be disbursed by the registrar for the purpose of taking up and retiring and refinancing in accordance with the composition proceedings, such remaining outstanding old obligations as are affected by the plan and may be presented to the registrar for that purpose within a period of twelve months from the date of the decree; that all such obligations so presented and paid for, be forthwith cancelled and be returned to the petitioning district; that all such outstanding old obligations not presented for payment within the one year shall thereafter be forever barred from participating in the plan of composition; that upon the expiration of the period



of twelve months from the date of the decree, the clerk of the Court should forthwith notify the Reconstruction Finance Corporation of the amount of funds then remaining in the registry and that the same are available for the purchase of new bonds of the district then held by the Reconstruction Finance Corporation at par and accrued interest; that any new bonds so purchased be forthwith [14] cancelled and returned to the District; that any part of such funds not used for such purposes within sixty days after the date of mailing of such notice to the Reconstruction Finance Corporation should be paid by the registrar to the District to be used by it solely in payment of its new bonds and interest thereon. (Tr. 36).

That the Bekins trustees failed to present their eleven bonds within the one year provided in the final decree; in fact they did not present them at all, although they originally filed a verified statement of their claim on the bonds. On February 6, 1944, an inquiry was made concerning them addressed to Mr. George R. Freeman, formerly attorney for the District by Mr. W. Coburn Cook, present counsel for the trustees. On August 24, 1943, which was later than the elapsing of the year for the presentation and surrender of bonds, a report was made by the registrar of the Court, disclosing that of the original \$13,640.00 in his hands to pay bonds, there remained \$7040.00, and that in pursuance of the instructions of the assistant treasurer, that said sum of \$7040.00 was used as follows:

Payment of refunding bonds of the District numbers 81 to 86 (both inc.), each for \$1,000.00 and a bond number 74 of such issue in the sum of \$500.00 and in payment of bond number 1 in the sum of \$300.00, leaving a balance in the hands of the registrar in the sum of \$195.42, which sum was returned to the District (Tr. 53).

Following such disbursal there remained no money in the hands of the District to purchase old bonds.

That upon July 28, 1943, the Bekins trustees filed a motion in the above matter having as its purpose to set aside the provisions of the final decree and permit the presentation and surrender of the trustees bonds, and to relieve their default, and [15] to permit them to secure the composition figure of \$2200.00.

That at the time the last mentioned motion was made, the District did not have the moneys to pay these bonds; in addition, the final decree having provided the limit in which the bonds might be presented for collection of the composition figure and the time having long since expired, it contested the motion on the theory that the final decree was final, and that it could not expend the District's money, being public money, without due and legal procedure authorizing such expenditure. That the matter came up before the Federal Court for hearing and was submitted; the Court on September 19, 1944 (Tr. 64) ordered that the motion be denied.

Thereafter and upon October 14, 1944, the Bekins trustees appealed; on July 17, 1945, the United

States Circuit Court of Appeals, 9th Appellate District, reversed the order of the lower Court; thereafter the District petitioned said Court for a re-hearing which was denied upon August 22, 1945; the District then petitioned the United States Supreme Court for a Writ of Certiorari, which was denied upon December 3, 1945. Thereafter, the Writ of Mandate came down from the United States Circuit Court of Appeals; then followed the Order sought to be amended, which was made January 25, 1946.

Thereafter and on or about March 25, 1946, the Bekins bonds were sent to the Chico Branch of the Anglo California National Bank with instructions to present and deliver said bonds upon payment of the sum of \$2200.00 plus \$161.60 costs of suit. That thereafter these were presented to the Secretary-Treasurer of the District by the bank who informed the bank that he did not have sufficient funds on hand to pay same, and on or about March 28, 1946, they were returned to the Bekins. That thereafter, as affiant is informed and believes, upon March 28th, 1946, the [16] Bekins had the bonds returned to the Anglo California National Bank, Chico Branch, to remain until April 20, 1946 and if payment were not effected by that date to be returned to the Bekins. That as affiant is informed and believes, upon said date said bonds were returned to the Bekins.

That it is a matter of judicial knowledge that irrigation Districts levy assessments each year in September for moneys required for the ensuing

fiscal year. That at the time of the presentation of the bonds in question for payment at the composition figure, the District did not have sufficient funds to pay. That to secure the funds to pay, the District on March 27, 1946, sought to borrow the money from the Reconstruction Finance Corporation; on April 4, 1946, the Reconstruction Finance Corporation wrote the Secretary of the District that the District might make application to borrow the money, and if granted, the Reconstruction Finance Corporation would require the judgment be assigned to it and the District agree to make annual levies within specified years, not to exceed four, to repay the Reconstruction Finance Corporation, at which time the judgment would be released. That thereafter on May 4, 1946, the District passed a resolution to borrow the money from the Reconstruction Finance Corporation to pay the Bekins. That thereafter and by letter dated May 24, 1946, the Reconstruction Finance Corporation suggested that the District request either a new loan of it or for permission to use the District's bond reserve fund. The bond reserve fund is a fund set aside under the provisions of the agreement between the District and the Reconstruction Finance Corporation whereby the Reconstruction Finance Corporation agreed to advance the money to the District to effect its composition with its creditors, and in turn the District agreed to issue new bonds in the amount of the money so advanced, which bonds have been issued and delivered to the [17] Reconstruction Finance Corporation, and in which said



agreement it was provided that the District should build up a bond reserve fund to take care of the new bonds, principle and interest, to a sum of \$4500.00 to be built up at the rate of \$900.00 per annum until it reached the sum of \$4500.00, and thereafter to be held at such figure until the bonds were paid. That on the last mentioned date, there was \$3700.00 in said bond reserve fund, but under the agreement of the District with the Reconstruction Finance Corporation, this fund could be used for no other purpose than the one specified in the aforesaid agreement; this letter from the Reconstruction Finance Corporation was from its Kansas City office, and stated further that upon receipt of a reply from the District indicating that it would consent to the conditions outlined, that the Reconstruction Finance Corporation would transmit the matter to its Washington, D. C., headquarters for appropriate action.

That the next meeting of the Board of Directors was held June 19, 1946, at which time the entire Board stated that it was resigning, and suggested the matter be left for the determination of the new Board. That at the time the Board of Directors of the District comprised E. E. Saal, James Mills, Jr. and Hugh Baber; that upon the 8th day of July, 1946, E. E. Saal and James Mill, Jr. resigned as Directors of the District, leaving only one Director, Hugh Baber; that said Compton-Delevan Irrigation District is situation in the County of Colusa, State of California, and no land-owner resides within the District, and under law the Directors are appointed

by the Board of Supervisors; upon August 1, 1946, the Board of Supervisors appointed N. C. Post and Robert M. Smith in the place of the two who had resigned. On August 1, 1946, the Board of Supervisors appointed W. Knowles as a Director in place of Director Robert M. Smith, who had not accepted the [18] appointment. That upon October 22, 1946, the said N. C. Post and W. Knowles filed official bonds required by law and took their oath of office, and the first meeting of the Board held since the meeting of June 19, 1946, when the Board as a whole said it was resigning, was held Wednesday, November 6, 1946.

That upon July 24, 1946, the Washington, D. C., office of the Reconstruction Finance Corporation communicated with the District, suggesting that the District, through its Secretary, inform the Reconstruction Finance Corporation to the effect that the District would consent to the terms and conditions outlined in the said Reconstruction Finance Corporation's letter of May 24, 1946, which letter is referred to hereinbefore. As set forth hereinbefore, there was no Board of Directors of the District upon July 24, 1946, and hence no one from whom the Secretary could secure authority to write the Reconstruction Finance Corporation, and as stated hereinbefore there was no Board of Directors of the District until two members were appointed by the Board of Supervisors of Colusa County, and until such two members qualified upon October 22, 1946.

That to construe the order in question in conformity with the claim of the Bekins trustees would

be unequitable, and clearly was not the intention of the trial Court. That the trial Judge, Martin I. Welsh, who signed the Order in question did not intend that upon such non-payment within the thirty days that the Bekins should recover the face value of the bonds is disclosed from the fact that the Judge, of his own volition, struck from the proposed order submitted to him by the Bekins trustees the concluding seven lines, which read as follows:

“That the provisions of said decrees restraining them from pursuing their ordinary remedies upon said bonds in the State or Federal Courts shall be vacated and set aside and permission is granted to said trustees to take proceedings for the collection of said bonds in full and enforcement of [19] their rights thereon free from the restraint of the interlocutory and final decrees of this Court in these proceedings.”

From this action of the Court, affiant believes and therefore alleges that if the Court had intended that the trustees could recover the face value of the bonds in full he would not have struck out the provision giving them the right “to take proceedings for the collection of said bonds in full”.

That as affiant is informed and believes and therefore alleges, Judge Martin I. Welsh, who was the trial judge in the proceedings in the above matter is ill, and unable to be seen and talked to to ascertain his exact intentions in respect to the Order in question.

The District originally had a "first issue" of bonds in the sum of \$575,000.00; thereafter it issued the funding bonds in the aggregate principal amount of \$384,000.00; at the time of the filing of the petition for composition, the District had outstanding indebtedness under the first issue, \$103,000.00, and under the funding issue, \$281,000.00 (tr. 4).

The composition figure was twenty cents upon the dollar. All but a very few accepted the composition figure; the Bekins trustees were one of those who did not present their bonds. They brought suit to have the final decree amended so that they might present their bonds and be paid their money. This suit went through the Courts. The Bekins trustees finally prevailed, the United States Circuit Court stating that in equity the composition money to be paid for the bonds was not legally the District's, but was equitable the Bekins; this Court amended the final decree to conform therewith. To now give the Bekins the right to recover the full value of the bonds is giving them a preference which would not be in accordance with equity; all of the other bond holders that accepted the settlement figure should and ought to be entitled [20] to the full face value of the bonds, if the Bekins are. The Bekins prevailed in their suit on equitable principals, otherwise, if the decision was made on wholly legal principals they would not have prevailed. The bankruptcy court is an equitable court, this court should consider all the facts and circumstances and



should decree that they should be paid their composition money within a certain specified time. To guarantee such payment, in the event such order is made, there is sent with this petition and affidavit, a check of Compton-Delevan Irrigation District to the Registrar of the United States Federal Court in the sum of \$2200.00, together with another check to such registrar in the sum of \$161.60, the Bekins' costs, to be delivered to the Bekins upon the presentation and surrender of their bonds, or if this be not done, to be applied by the Registrar as may be ordered by the Court.

That this Court, in pursuance of principals of equity, modified the final decree to permit the Bekins to present their bonds and secure the composition money; now the Bekins are not pursuing principals of equity in demanding that they be paid at the full face value of the bonds, and the decision on this motion should be guided and decided upon the same equitable principals that were involved when the Bekins made their motion.

/s/ JEROME D. PETERS.

Subscribed and sworn to before me this 13th day of November, 1946.

[Seal]                      GEO. A. ZUNDELL,  
Notary Public in and for the County of Butte, State  
of California.

[Endorsed]: Filed Nov. 14, 1946. [21]

[Title of District Court and Cause.]

## AFFIDAVIT OF JEROME D. PETERS

State of California,  
County of Butte—ss.

Jerome D. Peters, being first duly sworn, deposes and says:

The affidavit filed herein by W. Coburn Cook, states that no sufficient showing has been made as to why the moneys which the Court held, were not available to creditors and belonged to the creditors, pursuant to the mandate in the case of *Bekins vs. Compton-Delevan Irrigation District*, supra, during all of said period of time for payment of petitioners' bonds and coupons and he denies that said funds were not available; in answer thereto, affiant states that the Court held no money at that time; that [22] the District did not have money with which to pay, and further states that the original affidavit of affiant filed herein discloses why, and further that all such moneys were sent long before by the Registrar of this Court to the Reconstruction Finance Corporation in Washington, D. C., in pursuance of the order of this Court.

That said W. Coburn Cook in his said affidavit further states that the correspondence between the Reconstruction Finance Corporation and the District is strictly irrelevant to any issue in this case. Affiant takes issue with this last statement of the said W. Coburn Cook and alleges that it is entirely relevant in a Court of equity to show the good faith of the District in its efforts to comply with the

direction of the Court. The said affiant, W. Coburn Cook also states in his affidavit that the District has power to borrow money, by warrant or otherwise, and that the Bekins trustees would readily have made an arrangement with the District for the payment of said bonds upon being approached on that subject, but that no offers or suggestions were ever made by the District. Affiant alleges that while irrigation districts have the power to borrow money, yet nevertheless the said Compton-Delevan Irrigation District was bound by its contract with the Reconstruction Finance Corporation to use its money for the purposes for which they were either advanced by the Reconstruction Finance Corporation or for which they were budgeted in the assessment of the District and hence to have borrowed contrary to such arrangement would have been a breach of contract by the District with the Reconstruction Finance Corporation; as to the statement that the Bekins trustees would readily have made an arrangement with the District for the payment of said bonds, affiant alleges that no offers or suggestions were made to that effect by the Bekins trustees to the District; that the District did everything in [23] its power to secure the money with which to pay the composition figure to the Bekins trustees.

Affiant W. Coburn Cook makes the following unwarranted statement: “. . . upon information and belief that there is no valid board of directors for the Compton-Delevan Irrigation District and that the counsel for the district is not authorized and

was not authorized to make the deposit with the clerk which he did in this case''; in this affiant W. Coburn Cook is entirely in error.

The original affidavit of Jerome D. Peters, states that upon July 8, 1946, E. E. Saal and James Mills resigned, leaving only one director, Hugh Baber; that on August 1, 1946, N. C. Post and Robert M. Smith were appointed as directors; that on October 1, 1946, W. Knowles was appointed as a director in place of Robert M. Smith, who had not accepted the appointment; upon October 22, 1946, the said N. C. Post and W. Knowles filed official bonds required by law and took their office. That the first meeting of the board held since June 19, 1946 was held Wednesday, November 6, 1946. In affiants original affidavit there was a slight error in the foregoing dates, but the foregoing are correct. These allegations disclosed the appointment of two members of the Board who, with the one who did not resign, Hugh Baber, constituted the Board of Directors on November 6, 1946 and since.

Affiant W. Coburn Cook states in his affidavit that it does not appear in the original affidavit of Jerome D. Peters that there is a board of directors or that there can be any board of directors except those who originally resigned, since there are no landowners in the district. There are landowners in the District, and all the lands in the district are owned. That where an irrigation district has no resident landowners, the board of directors is appointed by the board of supervisors of the county in which the district is situated, which in this case is the County [24] of Colusa, from landowners in the District.

As to the statement that the only legal board of directors is the old board which resigned, affiant states that no one of the old board resided within the district. The argument of counsel cannot be fathomed. If there be no board, then how can counsel ask the Court to place a penalty upon a district when a district has no legal ability to act? The present board however, is a duly appointed, qualified and acting board; it authorized the deposit of the \$2200.00 into the registry of this Court and the same is deposited therein.

That it was not the intention of the Honorable Judge Martin I. Welsh, who signed the order, to give to the order the meaning claimed by the Bekins trustees, as is shown and disclosed by the order and the original affidavit and this affidavit of Jerome D. Peters.

Finally, the last point of W. Coburn Cook is that the Circuit Court of Appeals held that the composition money was not legally the district's money and therefore it cannot be said that it was not available for payment. In effect the Court said this, but the money had been returned by the registry of this very Court under order of this Court to the Reconstruction Finance Corporation in Washington, D. C. and hence at the time was not available to the District, and the only manner that the District could have money readily available was to have the Reconstruction Finance Corporation advance it, which they agreed to do as disclosed by the affidavits on file herein.

That it appears from all the facts that when the Bekins trustees were in a similar position they



demand in this Court and other Courts that equity be done and received the equity which they claimed was due them. Now they take the reverse view and maintain an untenable position making no offer to do equity whatsoever. [25]

Finally Mr. Cook states that the offer of the District is inequitable, for while it offers to make payment required by the decree, it offers nothing for damages for delay, attorneys fees, costs or inconvenience. It is true no such offer has been made, but similarly when the Bekins trustees made their original motion herein, they made no such offer either. We anticipate in the matter that the Court will make an order that is equitable, for a bankruptcy Court is a court of equity, but we do not consider any such offer as suggested by the Bekins trustees to be a condition precedent to the making of the motion or application or to a decree based thereon.

Finally, affiant maintains that in equity an order should be made by this Court that the Bekins trustees surrender their bonds to the Registry of this Court and accept the \$2200.00 deposited with the Registry as the payment of the composition figure. Such an order is not only right and just, but will avoid a multiplicity of legal proceedings.

JEROME D. PETERS

Subscribed and sworn to before me this 4th day of February, 1947.

R. LAUGHLIN

Notary Public in and for the County of Butte, State

[Endorsed]: Filed February 5, 1947. [26]  
of California.

[Title of District Court and Cause.]

CLOSING AFFIDAVIT OF W. COBURN COOK  
ON APPLICATION FOR ORDER GRANT-  
ING LEAVE TO SUE AND IN OPPOS-  
ITION TO APPLICATION OF COMPTON-  
DELEVAN IRRIGATION DISTRICT FOR  
AN ORDER INTERPRETING THE PRE-  
VIOUS ORDER GRANTING MOTION TO  
MODIFY THE FINAL DECREE

State of California,  
County of Stanislaus—ss.

W. Coburn Cook, being duly sworn and referring to the affidavit of Jerome D. Peters dated February 4, 1947 herein says:

1. That it does not appear from the showing of the irrigation district that they were unable to pay the \$2200.00 to Bekins Trustees previously. The Circuit Court of Appeals determined that the moneys which were sent to the R. F. C. were moneys which belonged to the Bekins Trustees and therefore the district should have obtained those moneys and paid them to the Bekins Trustees. The District and the R. F. C. converted that money illegally and wrongfully. Peters now talks about a loan from the R. F. C. That is beside the point. The money should have [27] immediately been paid to the Bekins Trustees. Peters contends that they were bound by the contract with the R. F. C. and couldn't break that contract in order to pay the Bekins Trustees. But the Court said differently.

The Court said that the contract did not change the character of that money, that that money belonged to the Bekins Trustees and should have been paid to them. Therefore the showing of the district with regard to inability to pay money completely fails. Furthermore, they do not show why, if they can get the money suddenly now they could not get it suddenly before. They have deposited money in court, but they do not show where the money came from. They could have done that before. Therefore, their showing fails.

2. Affiant relies upon Peters' own statement in his pleadings and in court relative to the question of there being no landowners in the district who could qualify as directors. We stand upon our previous statement that the present board is not a legal board. Our argument only goes to the extent of showing that if the board is not a legal board it couldn't put up the money that has been deposited. The only legal board is the board which resigned. Or perhaps we should say which attempted to resign.

3. We deny that Peters knows what the intention of the Honorable Judge Martin I. Welsh who signed the order was, and his statement as to what his intention was is a mere legal conclusion. That is a matter for this Court to determine.

We have called attention to the fact that George R. Freeman, an attorney of record for the district in this case, approved the modification of the final decree. Also that Messrs. Peters and Peters dis-



approved the form of the order [28] and in that disapproval said the district asks to have stricken the words "upon such presentation and surrender of said bonds and coupons, the trustees shall no longer be bound by the terms of the final decree or the interlocutory decree herein." That was the only language which the district wanted to have stricken out, and that is the specific language which the court did not strike out. Therefore, the matter is *res judicata*.

4. It is untrue that the Bekins Trustee in their former application were in the same position as the district is now. There was no equity for the Bekins Trustees to do. It has always been a case of the district itself failing to do equity. They have not done equity now. It is also untrue that the Bekins Trustees did not surrender their bonds. The records of this court show that the bonds were surrendered to the Clerk of the Court and by the Clerk of the Court returned to the Bekins' after payment was refused. Furthermore, affidavits on file herein show that the bonds were again tendered to the district for surrender, but obviously should not be surrendered to the district since payment was refused. See affidavit by Bekins. [29]

5. This counsel deems that the contents of Mr. Peters' Affidavit should never have been in an affidavit; that most of what he says is merely argumentative, and should have been in his points and authorities, and we apologize for submitting our

reply in affidavit form, but upon consideration determined that we had to make the answer in the same form as the document answered.

W. COBURN COOK.

Subscribed and sworn to before me this 18th day of February, 1947.

[Seal]                      EMMA JANE NEARING,  
Notary Public in and for the County of Stanislaus,  
State of California.

[Endorsed]: Filed Feb. 19, 1947. [30]

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In the District Court of the United States for  
the Northern District of California, Northern  
Division

No. 9870

In the Matter of

COMPTON - DELEVAN IRRIGATION DIS-  
TRICT (In Proceedings for Confirmation of  
Plan of Composition of Outstanding Indebted-  
ness)

### OPINION AND ORDER

The two matters submitted are the application of the Compton-Delevan Irrigation District for an order interpreting the order of this court made January 25, 1946, and the application for leave to sue upon the bonds and coupons of Milo W. Bekins and Reed J. Bekins, as trustees under the last Will

and Testament of Martin Bekins, deceased. The previous chapters in this litigation are recounted in *Bekins v. Compton-Delevan Irrigation District* 150 Fed. 2d 526.

The facts in brief are that after publication of notices of the composition of the bonds of the District, an interlocutory, and later a final decree, fixing recovery on the bonds at 20 cents on the dollar and establishing the period of payment as one year, and after the payment of most of the bonds to the owners thereof, said trustees sought to recover on eleven bonds which were not presented within the time specified in the decrees. A motion was made by them to recover the sum of \$2,200, and the motion was denied; an appeal was taken to the Circuit Court of Appeals, which found that the trustees had received no personal notice of [31] the entry of either the interlocutory or final decree. The Circuit Court of Appeals stated that notice of the entry of the decrees should have been given to the trustees and that the \$2,200 belonged to the trustees and not to the District.

That court directed that this court grant the motion of the trustees. That motion as stated by the Circuit Court of Appeals was “to order appellee (the District) and the clerk to pay the appellants the \$2,200, ‘and if necessary for that purpose, to modify the terms of the final decree and to extend the time thereof for the deposit of said bonds, and, if necessary for that purpose, to relieve appellants from their default, and to grant them the right

to appear and claim the payment provided for by the plan of composition despite the provisions of the final decree'."

In compliance with the mandate of the Circuit Court of Appeals, this court on January 25, 1946 entered an order granting the motion to modify the final decree, which modification in effect extended the time for the trustees to deposit and surrender the eleven bonds within 30 days after the order became final and be paid the \$2,200, plus \$161.60 costs, or "upon the failure of said Compton-Delevan Irrigation District, petitioner herein, to make payment upon such presentation and surrender of said bonds and coupons, the said trustees shall no longer be bound by the terms of the final decree or interlocutory decree herein." It appears that the trustees presented to the District the bonds on March 25, 1946, within the time thus prescribed, but that the District failed to pay the amounts above mentioned, giving the want of the requisite funds as its reason for such failure. It appears that the money necessary to finance the composition had been borrowed by the District from the Reconstruction Finance Corporation, and the \$2,200 being a portion thereof, had, prior to the determination of the appeal, been returned by the registry of this Court to the lender under an order of this Court. On March 27, 1946, the District sought to again borrow from the Reconstruction Finance Corporation this sum of \$2,200 to pay to the trustees. Negotiations continued between the Reconstruction

Finance Corporation and the District until July 8, 1946, when two of the three members of the Board of Directors of the District resigned. Since no land owner resided in the District, under the applicable California statute the duty devolved upon the Board of Supervisors of Colusa County to appoint directors to fill these vacancies. This was done by the Board of Supervisors on August 1, 1946. Official bonds were filed by the appointees and they took office on October 22, 1946. The first meeting thereafter of the Board of Directors was held on November 6, 1946. The trustees filed herein on October 7, 1946, notice of application for an order granting them leave to sue the District for the full principal amount of the bonds upon the premise that they are no longer bound by the interlocutory and final decrees. On November 14, 1946, the District filed herein a notice of application for an order interpreting the order of modification of January 25, 1946 as meaning that, if the trustees were not paid the composition amount and costs upon presentation of their bonds within the time limited, their right of recovery against the District is limited to the collection of the composition figure and costs. On the last mentioned date the District deposited in the Registry of this court the sums of \$2,200 and \$161.60. The \$161.60 has been paid to the trustees and the \$2,200 remains so on deposit.

This proceeding was brought for composition of the debts of the District under Chapter 9 of the Bankruptcy Act, [33] as amended, 11 U.S.C.A.



Sec. 401 and following. After necessary steps had been taken the composition was ordered and the majority of the bond holders were paid the sums due them under the plan of composition.

A bankruptcy court, having no terms, sits continuously and applies the doctrines of equity. *Wayne United Gas Co. v. Owens Illinois Glass Co., et al*, 300 U. S. 131, 57 S. Ct. 382, 81 L. Ed. 557. *Bekins, et al v. Compton Delevan Irrigation District*, 150 Fed. 2d 526.

The bankruptcy court has jurisdiction and power to "cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation there to \* \* \*." 11 U.S.C.A. Section 11, sub. 7. The proper and usual place to liquidate and adjudicate claims against a debtor is in the bankruptcy court. The court may, however, in its discretion permit some other forum to be used for the adjudication of the debtor's liability; but the granting of such a privilege should be denied unless some good reason therefor exists." *Poinsette Lumber & Manufacturing Co. v. Drainage No. 7 of Poinsette County, Arkansas, et al*, 119 Fed. 2d 270.

The trustees having bonds which are entitled to the same consideration as all other bonds of the District should be entitled to their fair share of the assets of the District under the composition plan as heretofore determined. The Circuit Court of Appeals so held in applying the rules of equity for the benefit of the trustees. Under the general doc-



trine of equity and under the theory of the Bankruptcy Act the court may modify the composition plan until it is satisfied that it is fair to all creditors. *Poinsette Lumber & Manufacturing Co. v. Drainage No. 7 of Poinsette County, Arkansas*, *supra*. After the composition is confirmed and [34] substantial execution has resulted it should be given the effect of a contract. *American United Life Insurance Co. v. Haines City, Florida*, 117 Fed. 3d 574.

This being so, the trustees are bound by their implied contract with the other bondholders of the District and are entitled to be paid at the rate of 20c on the \$1.00, a total of \$2,200. To allow the trustees to sue in another forum would in effect be granting them a right superior to that accorded the other bondholders. The resources of a debtor come within the exclusive jurisdiction of the bankruptcy court upon the filing of a proper petition. *Poinsette Lumber & Manufacturing Co. v. Drainage No. 7 of Poinsette Co., Arkansas, et al*, *supra*. These facts appear: The District had to obtain the money to finance the plan of composition from the Reconstruction Finance Corporation and in good faith paid off the majority of bondholders who presented their bonds for payment within the time prescribed by the Court, and returned the balance of the money not so expended to the Reconstruction Finance Corporation, including the \$2,200 which would have been paid the trustees had the bonds been presented in time; the District was unable to comply with the modification of the decree as ordered by the Circuit Court of Appeals within the

time therein provided because of lack of funds; apparently as soon as reasonably possible the funds to pay the trustees' bonds were obtained by the District and deposited into the registry of the Court. There appears to be no good reason why this court should not under its continuing jurisdiction limit the trustees' recovery to the \$2,200 upon the surrender of their bonds. By so doing the relief ordered by the Circuit Court of Appeals will be afforded the trustees and this court will not prefer them over the other creditors. [35]

The entire proceedings should be considered in the light of equitable principles. In the light of the facts that fair plan of composition had been made with the exception of the denial of the payment of the trustees' bonds by the final decree, which inequity was disposed of by the ruling of the Circuit Court of Appeals and the later order of this court, that there is no showing by the trustees in the pending motion that there is an exceptionally good reason for their being allowed to proceed in another forum and that as the trustees are obtaining the same rate of composition for their bonds as was paid the other bondholders, the composition should be viewed as a matter contractual in nature and there is no inequity in restricting the trustees to the Bankruptcy Court for a complete adjudication of this matter.

It is contended by the trustees that Rule 60 of the Rules of Civil Procedure, 28 U.S.C.A., following Section 723c, would prevent a further action by this court since more than six months had passed

after the order of January 25, 1946, was to have been complied with. While there is no doubt that the rules apply since the issuance of General Order in Bankruptcy No. 37 by the United States Supreme Court, 11 U.S.C.A., following Section 53, the rules are not intended to abridge, enlarge or modify the substantive rights of any litigant (Section 1, Act of Congress of June 19, 1934, ch. 651, 28 U.S.C.A., Section 723b), and it is necessary to consider them as procedural with the Bankruptcy Act furnishing the substantive law. In *re Stein*, 43 Fed. Sup. 845. Here the substantive rights of the entire district would be affected if the trustees are allowed to proceed in another forum. Inasmuch as the Bankruptcy Court has jurisdiction in the making of composition plans, this court has [36] continuing jurisdiction and the rules of civil procedure do not restrict that jurisdiction.

It appears clear that the words "upon the failure of said Compton Delevan Irrigation District, petitioner herein, to make such payment upon such presentation and surrender of said bonds and coupons the said trustees shall no longer be bound by the terms of the final decree or the interlocutory decree herein" should not be construed to mean that if the payment was not made in accordance with the order that the jurisdiction of this court would cease. This is borne out by the fact that in the signed order the language vacating the restraint of the decree upon the trustees to pursue their ordinary remedy in the state of federal court was deleted from the proposed order presented to the court.

Of necessity the trustees would not be bound by the terms of the decree if the bonds were not paid in accordance with the order of January 25th since the Circuit Court of Appeals had found the trustees are entitled to the composition value of the bonds, namely \$2,200. It must be kept in mind that the extent of the mandate from the reviewing court was to require the granting of the motion, from the order denying which the appeal was taken. The object of that motion was not to relieve the trustees from the composition adjudication but to require the payment of the \$2,200 under an extension of time to deposit the bonds. The trustees by the modification of the order of January 25th became entitled to the same valuation placed upon the bonds by the plan of composition as the other bondholders and the order contained in the mandate of the Circuit Court of Appeals and the order of this court of January 25, 1946, grants the trustees no greater rights than the other bondholders under the plan. To hold otherwise would be to create an inequity.

Mention has been made in the briefs of attorney's fees and other expenses incurred as a result of the tardiness of the District. Reasonable attorney's fees and reasonable necessary expenses, if any, incurred herein by the trustees since the tender of the bonds should be assessed against the District. If stipulated to by counsel the evidence on this issue might be submitted upon affidavits; otherwise, the clerk will set a date for a formal hearing restricted to these matters. Upon a determination thereof an order will be entered denying the appli-

cation of the trustees for leave to sue with conditions to be named in the order.

The motion for an interpretation of the order of January 25, 1946, is granted in conformance with the interpretation expressed herein.

Dated, April 23, 1947.

/s/ DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed April 23, 1947. [38]

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[Title of District Court and Cause.]

### NOTICE

To W. Coburn Cook, Berg Building, Turlock, Calif.; Jerome D. Peters, 340 Broadway, Chico, Calif.; George R. Freeman, Willows, Calif.:

You Are Hereby Notified that on April 23, 1947, Judge Dal M. Lemmon, in accordance with an opinion and order this day signed and filed, Ordered that the application for leave to sue be and the same is hereby Denied. It is further Ordered that the application for an order interpreting the order of January 25, 1946, be and the same is hereby Granted, in accordance with the interpretation of the Court as stated in his written opinion.

C. W. CALBREATH,

Clerk,

U. S. District Court.

Sacramento, California

April 24, 1947. [39]



[Title of District Court and Cause.]

### STIPULATION

It is stipulated by and between Compton Delevan Irrigation District, and Milo W. Bekins and Reed J. Bekins, as trustees under the last Will and Testament of Martin Bekins, Deceased, that the matter of payment of reasonable attorneys' fees and reasonable necessary expenses incurred by the trustees herein, as referred to in the Opinion and Order filed April 23, 1947, herein, may be submitted to the Court by Affidavit.

Dated, May 2, 1947.

PETERS AND PETERS,

JEROME D. PETERS,

Attorney for Compton

Delevan Irrigation District.

W. COBURN COOK,

Attorney for Milo K. Bekins

and Reed J. Bekins, as

trustees under the last Will

and Testament of Martin

Bekins, Deceased.

[Endorsed]: Filed May 26, 1947. [40]



[Title of District Court and Cause.]

AFFIDAVIT

State of California,  
County of Butte—ss.

Jerome D. Peters, being first duly sworn, deposes and says:

That the firm of Peters and Peters, is attorney for Compton Delevan Irrigation District in the above matter; that he has read the affidavit of W. Coburn Cook, attorney for the Bekins trustees, filed herein in pursuance of the suggestion of the Court in reference to attorneys fees and costs upon the application of the Bekins trustees to sue and upon the application of the District for an interpretation and order of the Court.

The writer believes that the Court is fully able to determine what is equitable that the Bekins trustees be paid for counsel fees and costs. [41]

The matters concerning which counsel fees and costs are asked, originated in a motion by the Bekins trustees to sue for the entire face value of the bonds, which the writer assumes would also include interest. If the motion had been made for an order for leave to sue for the compromise figure, no further legal action would have been required, and it would have been stipulated that they might do so. However, the motion to sue for the face value of the bonds had to be resisted; which led to the motion of the district to interpret the decree of the Court which was eventually interpreted in

its order of April 23, 1947, by this Court. By reason of the application for leave to sue for the face value of the bonds, there was made necessary the briefs in connection with the respective parties, all of which would have been avoided if, as pointed out above, the original application had been for leave to sue for the composition figure.

The writer does not care to pass upon the reasonableness or unreasonableness of another attorney's fees; the writer submits the matter to this Court knowing that this Court will consider the situation and the matters involved and render a decision which it deems just and proper in respect to both parties.

JEROME D. PETERS.

Subscribed and sworn to before me this 28th day of May, 1947.

[Seal]

R. LAUGHLIN,

Notary Public in and for the County of Butte, State of California.

[Endorsed]: Filed May 31, 1947. [42]

[Title of District Court and Cause.]

## FINDINGS AND ORDER

Milo W. Bekins and Reed J. Bekins, as trustees, having heretofore filed their motion herein for leave to sue, and Compton-Delevan Irrigation District having also filed a motion herein for the interpretation of the Court's Order modifying final decree, which Order was made and entered January 25, 1946, and the Court having passed upon said motions by its preliminary order made and entered April 24, 1947, wherein was denied the petition to sue and was granted the motion to interpret the final decree, the Court in its opinion interpreting the final decree in conformity with the interpretation requested by Compton-Delevan Irrigation District, but however, being of the opinion that the District should pay to the Bekins trustees, counsel fees and costs in the matter, in a reasonable sum and suggesting that the respective parties arrange and agree upon such sum or submit it to the Court upon affidavits, and the matter being submitted to the Court upon affidavits, and the Court having fully considered said affidavits and the entire subject matter,

It is the finding of the Court from the affidavits filed by counsel that the District failed to accept and pay the composition value of the bonds presented to it by Milo W. Bekins and Reed J. Bekins, trustees as heretofore provided for [43] by order heretofore entered herein on January 25, 1946;

that following and as a result of such failure, said trustees filed herein said motion for leave to sue and said District filed its motion for interpretation of said order of January 25, 1946; that said trustees incurred costs and attorney fees in presenting their said motion to this court and in resisting the motion of said District; that had the said District not failed to pay said composition value of said bonds within the period so provided in said order of January 25, 1946, said trustees would not have incurred said additional costs and attorney fees; that the reasonable amount of said attorney fees so incurred is the sum of \$350.00 and that the additional costs so incurred by said trustees amount to \$35.00; that said District should, in addition to the payment of the composition value of said bonds, be required to pay to said trustees said additional costs and attorneys fees.

Therefore, It Is Hereby Ordered that Compton-Delevan Irrigation District pay into the registry of this Court the sum of \$385.00 as and for a reasonable counsel fee and costs which the Court awards to the Bekins Trustees in this matter, and upon said sum being paid, this Court will make its final order denying the trustees leave to sue.

Dated, June 19th, 1947.

DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed June 19, 1947. [44]

[Title of District Court and Cause.]

NOTICE

To W. Coburn Cook, Turlock, Calif.; Peters & Peters, 304 Broadway, Chico; George R. Freeman, Willows, Calif.:

You Are Hereby Notified that on June 19, 1947, Judge Dal M. Lemmon Ordered that in accordance with findings and order this day signed and filed, the petition for attorneys fees be and the same is hereby Granted. It is further Ordered that the Compton-Delevan Irrigation District pay into the registry of this court the sum of \$385, as and for a reasonable counsel fee and costs, and upon said sum being paid, this Court will make its final order denying the trustees leave to sue.

C. W. CALBREATH,  
Clerk, U. S. District Court.

Sacramento, California

June 20, 1947. [45]

[Title of District Court and Cause.]

### ORDER

Milo W. Bekins and Reed J. Bekins, as trustees, having heretofore filed their motion herein for leave to sue, which was opposed by Compton-Delevan Irrigation District, and the latter District having also filed a motion herein for the interpretation of the Court's Order modifying final decree, which order was made and entered January 25, 1946, and the Court having passed upon said motions by its preliminary decision made and entered April 24, 1947, wherein the Court denied the petition of the Bekins trustees to sue and granted the motion of Compton-Delevan Irrigation District to interpret the final decree, subject to the decision of the Court, in which decision the Court stated it was of the opinion that the District should pay to the Bekins Trustees counsel fees and costs in the matter in a reasonable sum, and suggesting that the respective parties arrange and agree upon such sum or submit it to the Court upon affidavits, and the matter [46] being submitted to the Court upon affidavits, the Court, after duly considering the matter, upon the 19th day of June, 1947, entered its Order that the Compton-Delevan Irrigation District pay into the registry of the Court the sum of \$385.00, as and for a reasonable counsel fee and costs and furthermore upon such sum being paid, the Court would make its further order denying the Bekins leave to sue, and the District having paid into the registry



of said Court the said sum of \$385.00 as attorneys fees and costs of the Bekins Trustees, and having fully conformed with the said Order of the Court;

It Is Hereby Finally Ordered that the petition or application of the Bekins Trustees to sue be and the same is hereby denied, and

It Is Further Ordered that the registrar of this Court pay to the said Bekins as Trustees, the said sum of \$385.00, as and for reasonable attorneys fees and costs in these proceedings, upon their application therefor.

Dated:

DAL M. LEMMON,

Judge of the Federal Court.

[Endorsed]: Filed July 16, 1947. [47]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT (UNDER RULE 73)

Notice Is Hereby Given that Milo W. Bekins and Reed J. Bekins as Trustees under the Last Will and Testament of Martin Bekins, Deceased, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Preliminary Opinion and Order made and filed herein on April 23, 1947, and from the Final Order thereon denying the petition of the said Bekins Trustees to sue and interpreting the

court's previous order which modified the final decree dated January 25, 1946, entered in this proceeding on July 16, 1947. This appeal is from the whole of the preliminary Opinion and Order filed April 23, 1947, made effective by the order filed July 16, 1947, and from the whole of the said order filed July 16th, 1947.

Dated, August 20, 1947.

W. COBURN COOK,  
Attorney for Appellants.

[Endorsed]: Filed Aug. 21, 1947. [48]

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[Title of District Court and Cause.]

## STATEMENT OF POINTS AND ASSIGNMENT OF ERRORS ON APPEAL

The Appellants, Milo W. Bekins and Reed J. Bekins as Trustees under the Last Will and Testament of Martin Bekins, Deceased, make the following assignment of errors which they aver occurred in the determination of this proceeding and in the rendering of the decrees appealed from, and state that the points on which they intend to rely on the appeal of this cause are the following:

1. The court erred in denying the application of the Bekins Trustees for leave to sue upon the bonds held by the Trustees.

2. The court erred in granting the application

of the Compton-Delevan Irrigation District for an order interpreting the order of the court made January 25, 1946.

3. The court erred in holding that it had continuing jurisdiction in the matter of the bankruptcy plan.

4. The court erred in holding that the Rules of Civil Procedure for Federal Courts do not restrict the continuing [49] jurisdiction of the court.

5. The District Court did not have power to change or modify the order of January 25, 1946, made pursuant to the Mandate of the Circuit Court of Appeals in the prior appeal after the expiration of the time provided in the Rules of Civil Procedure.

6. The court was without power to interpret the order of January 25, 1946, after the expiration of the time provided in Rule 60 of the Rules of Civil Procedure in such a manner as to nullify the effect of the order.

7. The evidence was insufficient to sustain the finding of the District Court that the Compton-Delevan Irrigation District could not have paid the amount due the Trustees prior to the time when the moneys were deposited with the registry of the court.

8. The court erred in determining and holding in effect that until moneys were borrowed from the Reconstruction Finance Corporation the Compton-Delevan Irrigation District could not otherwise furnish the moneys due the trustees.

9. The court erred in determining in effect that equitable reasons were evidenced and shown as a foundation for the court's order.

10. The court was in error in determining and holding that it had exclusive or any jurisdiction of the resources of the debtor.

11. The court erred in not applying the provisions of the Municipal Bankruptcy Act which provide that upon the failure of the debtor to furnish the consideration for the composition the creditor is no longer bound by the plan.

12. The court erred in determining and holding that there were no officers of the district who could act to provide the moneys due the trustees prior to the hearing in this matter below.

Dated: Sept. 4, 1946.

W. COBURN COOK,

Attorney for Appellants.

[Endorsed]: Filed Sept. 6, 1947. [50]

[Title of District Court and Cause.]

## REGISTRY DOCKET PAGE

### DEPOSITARY

		Received	Disbursed	Balance
11/14/46	Received from Compton- Delevan Irr. Dist.....	\$2200.00		
	Received from Peters & Peters .....	161.60		
1/6/47	To Milo W. Bekins, etc., Check 2208 .....		\$161.60	
6/25/47	Deposit for fees & costs..	385.00		
7/16/47	To Milo W. Bekins, etc., Check 2309 .....		\$385.00	\$2200.00

[Title of District Court and Cause.]

## ORDER FOR EXTENSION OF TIME

Good Cause Appearing Therefor, it is ordered that the time for docketing the appeal herein be extended to and including October 10, 1947.

Dated, September 19th, 1947.

DAL M. LEMMON,

Judge, U. S. District Court.

[Endorsed]: Filed Sept. 19, 1947. [56]

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[Title of District Court and Cause.]

## CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 56 pages, numbered 1 to 56, inclusive, contain a full, true and correct transcript of certain records, and proceedings in the matter of the Compton-Delevan Irrigation District, No. 9870, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation and Counter-designation of Portions of the Record to be contained in the Record on Appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Seven and 90/100 (\$7.90), and that the same has been paid to me by the attorney for the appellants herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 23rd day of September, A. D. 1947.

[Seal]                      C. W. CALBREATH,  
Clerk.

By /s/ F. M. LAMPERT,  
Deputy Clerk. [57]

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[Endorsed]: No. 11737. United States Circuit Court of Appeals for the Ninth Circuit. Milo W. Bekins and Reed J. Bekins, as Trustees under the Last Will and Testament of Martin Bekins, deceased, Appellants, vs. Compton-Delevan Irrigation District, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed September 24, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11737

MILO W. BEKINS and REED J. BEKINS, as  
Trustees under the Last Will and Testament  
of Martin Bekins, deceased,

Appellants,

vs.

COMPTON-DELEVAN IRRIGATION  
DISTRICT,

Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANTS INTEND TO RELY ON AP-  
PEAL

The appellants adopt as the points on appeal on  
which they intend to rely, the Statement of Points  
designated and filed in the United States District  
Court.

Dated, October 1, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 2, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL AND FOR PRINTING

The appellant designates as those parts of the record as necessary for the consideration of the points upon which the appellant intends to rely in this appeal and for printing herein the following:

1. The entire transcript of record on appeal herein except the transcript of record on appeal in the case of *Bekins v. Compton-Delevan Irrigation District*, No. 10,934 in the United States Circuit Court of Appeal for the Ninth Circuit, and excepting also designation of contents of record on appeal and counter designation of contents of record on appeal in the United States District Court.

2. Statement of Points and Designation of Record for Printing in the United States Circuit Court of Appeal.

Dated, October 1, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellants.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Oct. 2, 1947.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It is stipulated between appellants and appellee that the motion of appellants for an order providing that that part of the record on appeal herein which is contained in the printed transcript of record on appeal in the former case of Bekins v. Compton-Delevan Irrigation District, numbered 10934 in this court need not be reprinted, be granted. Receipt of a copy of said former record is also admitted.

Dated, September 26, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellants.

PETERS AND PETERS,  
Attorneys for Appellee.

[Endorsed]: Filed Oct. 3, 1947.

[Title of Circuit Court of Appeals and Cause.]

### MOTION

Appellants move the court for an order providing that that part of the Transcript of Record on Appeal herein which consists of the printed Transcript of Record on Appeal in the previous case entitled *Bekins v. Compton-Delevan Irrigation District*, No. 10,934 in this court need not be reprinted but that in lieu of printing three copies of the same be made available to the court out of its files or from other sources.

Dated, October 1, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellants.

It is so ordered.

/s/ WILLIAM DENMAN,  
Judge, U. S. Circuit Court.

Dated, October 2, 1947.

[Endorsement]: Filed Oct. 3, 1947.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF THE RECORDS, PROCEEDINGS AND EVIDENCE  
APPELLEE DESIRES PRINTED

Appellee Compton-Delevan Irrigation District designate the following additional portions of the records, proceedings, and evidence to be included in the record on appeal as follows, to wit:

1. Notice of application for order granting leave to sue made by appellants, dated October 4, 1946.
2. Proposed order granting leave to sue in this matter.
3. Affidavit of Jerome D. Peters dated November 13, 1946, and filed on or about said date.
4. Affidavit of Jerome D. Peters filed on or about February 4, 1947.
5. Opinion and order of the United States District Court dated April 23, 1947.
6. Notice to counsel by clerk of the United States District Court dated April 24, 1947.
7. Stipulation between counsel dated May 2, 1947.
8. Docket entry showing deposit on or about November 13, 1946, of \$2200.00 and \$161.00, with the registrar of the United States District Court; the former to pay the composition figure on the bonds and the latter to pay the costs on appeal in

the action of Milo W. Bekins, etc. vs. Compton-Delevan Irrigation District; docket entry showing the withdrawal by the appellants of the \$161.00.

9. Letter from Dal M. Lemmon, United States District Judge, to counsel, dated June 3, 1947.

10. Findings and order of the court dated either June 19 or June 20, 1947.

11. Notice to counsel from the clerk of the United States District Court dated June 20, 1947.

12. Final order of the court in the matter dated July 16, 1947.

13. Docket entry showing deposit with the registrar of the court by appellee of \$385.00, \$350.00 of which was attorney's fees for appellants counsel, and \$35.00 representing court costs.

14. Any docket entry showing the withdrawal by appellants or their attorney of any of the moneys deposited as aforesaid with the registrar of the court.

Dated, October 6, 1947.

PETERS AND PETERS,  
Attorney for the Appellee.

[Endorsed]: Filed Oct. 8, 1947.



In the District Court of the United States for the  
Northern District of California, Northern  
Division

No. 9870

In the Matter of

COMPTON-DELEVAN IRRIGATION DIS-  
TRICT (in Proceedings for Confirmation of  
Plan of Composition of Outstanding Indebted-  
ness).

AFFIDAVIT OF W. COBURN COOK IN  
OPPOSITION TO APPLICATION FOR  
ORDER AMENDING ORDER OF JAN. 25,  
1946

State of California,  
County of Stanislaus—ss.

W. Coburn Cook, being duly sworn in opposition to the application of the Compton-Delevan Irrigation District for an order amending the order of January 25, 1946, herein says:

That Jerome D. Peters is obviously in error in referring to an action pending in this Court entitled Milo W. Bekins, et al. v. Compton Delevan Irrigation District, No. 10934. The number of this proceeding is 9870, and the number 10934 is a number which was assigned to the appeal of Milo W. Bekins and Reed J. Bekins as Trustees in the United States Circuit Court of Appeals for the Ninth Circuit when they appealed from the order of Judge Welsh denying the application for payment of the Trustees' bonds.

Reference is made to the application for leave to sue in this matter and the accompanying statement and affidavit, and the same is incorporated herein by this reference.

Affiant further says that the bonds and coupons referred to herein were on or about March 25, 1946, presented to the Treasurer of Compton Delevan Irrigation District for delivery and surrender pursuant to the order of this court amending the final decree dated January 25, 1946 (notice of entry of the order given February 4, 1946) and that said bonds and coupons remained on deposit with the Anglo California National Bank, Chico Branch, Chico, California, and were available for surrender and delivery as provided in said order until after May 21, 1946, and that said treasurer failed and refused to take and accept delivery and surrender of said bonds and coupons and failed and refused to make payment of the sum of \$2200.00 or the sum of \$161.60 costs provided in said order or any other sum and that said bonds and coupons were not withdrawn until on or about May 21, 1946, and then only because of such failure and refusal to pay.

That the time within which said bonds could be paid pursuant to said order expired on the fourth day of April, 1946.

That no sufficient showing has been made as to why the moneys which the court held were available to creditors and belonged to the creditors pursuant to the mandate in the case of *Bekins v. Compton Delevan Irrigation District*, *supra*, were not available for payment during all of said period of time

for payment of petitioners' bonds and coupons and affiant denies that the said funds were not available.

That the correspondence between the Reconstruction Finance Corporation and the district is strictly irrelevant to any issue in this case.

That the district has the power of borrowing money by warrant or otherwise and that the Bekins Trustees would readily have made an arrangement with the district for payment of said bonds upon being approached on that subject but no offers or suggestions were ever made by the district.

That at the appearance of Jerome D. Peters upon the application for order for leave to sue in this case, Mr. Peters stated to this court that the board of directors of said district had resigned and that there was no board of directors and affiant alleges upon information and belief that there is no valid board of directors and that counsel in this case is not authorized and was not authorized to make the deposit with the clerk which he made in this case, and that the district is without authority except by virtue of an act of its board of directors to make such deposit and calls attention to the fact that no evidence of such authorizing resolution is on file herein; that it does not appear from the affidavit of Jerome D. Peters that there is a board of directors or that there can be any board of directors except those who originally resigned since there are no landowners in the district. Water Code, Section 21100.

That it is not true that the Honorable Judge Martin I. Welsh who signed the order in question did so inadvertently or without intending the mean-

ing ordinarily deductible from the words used. He intended that the Bekins Trustees should be relieved from the effect of the interlocutory and final decree, upon default in payment by the district.

As pointed out in Mr. Peters' affidavit the Circuit Court of Appeals held that the composition money was not legally the district's money and therefore it cannot be said that it was not available for payment.

In no case is the offer of the district equitable. While it does offer to make the payment required by the decree, it offers nothing for damages for delay, attorneys fees, costs or inconvenience.

W. COBURN COOK.

Subscribed and sworn to before me this 3rd day of January, 1947.

[Seal]                      EMMA JANE NEARING,  
Notary Public in and for the County of Stanislaus,  
State of California.

Receipt of copy is acknowledged this 6th day of January, 1947.

PETERS & PETERS.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:                      C. W. CALBREATH,  
Clerk, District Court of the U. S., Northern District  
of California.

By /s/ F. M. LAMPERT,

[Seal]

Deputy Clerk.

[Endorsed]: Filed Jan. 6, 1947.

Title: Compton-Delevan Irrigation District

Docket 9870 Bk

## REGISTRY DOCKET PAGE—CORRECTED

	Depository	Received	Dis- bursed
11/14/46	Received from Compton-Delevan Irr. Dist. ....	\$2,200.00	
	Received from Peters & Peters....	161.60	
1/ 6/47	To Milo W. Bekins, etc. ....2208		\$161.60
6/25/47	Deposit for fees & costs .....	385.00	
7/16/47	To Milo W. Bekins .....2309		385.00
9/30/47	Returned by Bekins.....	385.00	

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

C. W. CALBREATH,

[Seal]

Clerk, District Court of the U. S.  
Northern District of California.

By /s/ F. M. LAMPERT,

Deputy Clerk.

In the United States Circuit Court of Appeal  
for the Ninth Circuit

No. 11737

MILO W. BEKINS and REED J. BEKINS,  
Trustees under the Last Will and Testament  
of Martin Bekins, deceased,

Appellants,

vs.

COMPTON-DELEVAN IRRIGATION  
DISTRICT,

Appellee.

### STIPULATION

It is stipulated between appellants and appellee that the affidavit of W. Coburn Cook dated January 3, 1947, which was omitted from the record on appeal herein and also record of the Clerk of redeposit of \$385.00 paid by the Clerk to the appellants be added to the record on appeal herein.

Dated November 10, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellants.

PETERS & PETERS,  
Attorneys for Appellee.



ORDER

It Is Ordered that the material above referred to be added to the record on appeal herein.

Dated November 28, 1947.

/s/ FRANCIS A. GARRECHT,  
Judge, U. S. Circuit Court.

[Endorsed]: Filed Nov. 28, 1947.

